

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2079 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

G S R T CORPN

Versus

GOTABHAI MALABHAI RATHOD

Appearance:

MR HARDIK C RAWAL for Petitioner
MR PRABHAKAR UPADYAY for Respondent No. 1

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 11/08/2000

ORAL JUDGEMENT

1. The respondent Gotabhai Malabhai Rathod was working as a Conductor under the petitioner Gujarat State Road Transport Corporation (GSRTC). While in service the respondent remained absent unauthorisedly for the period

from 27-9-1994 to 31-12-1994, causing inconvenience and financial loss to the petitioner Corporation. Because of the unauthorised absence an inquiry was held and the disciplinary proceeding was stated. In the disciplinary proceeding, the respondent was found guilty of all the charges. The competent authority after hearing the respondent, dismissed him from service by an order dated 19-7-1995. Having felt aggrieved by the order of the disciplinary authority, respondent moved the Labour Court and a reference has been made to the Labour Court, which was registered as Reference (LCV) No. 453 of 1996. The Labour Court after hearing the parties, directed the petitioner to reinstate the respondent with 50 % backwages. Having felt aggrieved by the award of the Labour Court, the petitioner Corporation filed this petition.

2. I have heard learned counsel of both the parties.

Learned counsel for the petitioner Mr. Rawal submitted that the Labour Court had not considered the fact that the respondent did not challenge the illegality if any of the departmental proceedings. It is submitted by Mr. Rawal that, earlier also the respondent was dismissed from service, but in the departmental appeal he was reinstated in service on 29-10-1983, after imposing minor penalty. Learned counsel for the petitioner further submitted that, if the unauthorised absence is not viewed seriously then it will be difficult for the petitioner Corporation to run its office and business. Learned counsel also submitted that the Labour Court did not consider the past conduct of the petitioner and thereby came to a wrong decision. Mr. Rawal also submitted that, having regard to the past conduct of the petitioner the Labour Court should not have modified the dismissal order of the respondent. It is also submitted that, since the Labour Court has failed to appreciate the original documentary evidence, the judgment & award passed by the Labour Court should be quashed.

3. Learned counsel for the respondent Mr. Upadhyay submitted that the unauthorised absence for a period of three months cannot be considered to be a serious offence. Learned counsel submitted that, because of some compelling circumstances and because of the ill health of the respondent he could not inform the authority in time. Accordingly learned counsel submitted that since the unauthorised absence involves only three months, the petitioner do not deserve the penalty of dismissal from service. Learned counsel for the respondent accordingly submitted that, the Labour Court has rightly taken a lenient view having regard to the offence alleged to have

been committed by the respondent. I cannot agree with the submission of learned counsel. The unauthorised absence could not be taken lightly because it affects the smooth administration of the office. Further, if unauthorised absence are not viewed seriously there cannot be discipline in the office. It further appears that the petitioner was earlier also dismissed for misconduct. However he was reinstated in service by the appellate authority dated 29-10-1993. Having regard to the nature of offence alleged to have been committed by the respondent, and considering the past conduct, I am of the view that the Labour Court has taken a too lenient view in the matter of penalty. I do not like to interfere with the order of the Labour Court regarding reinstatement of the respondent in service. But having regard to the facts & circumstances of the case, I am of the view that, he should not be paid any back wages. Accordingly the order of the Labour Court, Vadodara passed in Reference (LCV) 453 of 1996 is modified to the extent that the respondent will not get any back wages, but he should be reinstated in service within four weeks from the date of receipt of this order. The service of the petitioner from the date of dismissal till the date of reinstatement will be counted for the purpose of pension and pensionary benefits only. This petition is accordingly partly allowed. Rule made absolute to the aforesaid extent. I make no order as to costs.

DT: 11-08-2000

(P.K. Sarkar, J)

/vgn.